

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, } NO. CR-09-091-LRS  
Plaintiff, } (CV-12-499-LRS)  
v. }  
JONATHON JAMES BARNETT, }  
Defendant. }  
} **ORDER RE**  
} **MOTION FOR**  
} **RECONSIDERATION**

**BEFORE THE COURT** is Defendant's Motion For Reconsideration Pursuant To Fed. R. Civ. P. 59(e) (ECF Nos. 174 and 175). Defendant asks the court to reconsider its "Order Dismissing 28 U.S.C. §2255 Motion" (ECF No. 173).

A Fed. R. Civ. P. 59(e) motion for reconsideration can only be granted when a district court: (1) is presented with newly discovered evidence; or (2) committed clear error or the initial decision was manifestly unjust; or (3) there has been an intervening change in controlling law. *Dixon v. Wallowa County*, 336 F.3d 1013, 1022 (9<sup>th</sup> Cir. 2003).

Exhibit A appended to Defendant's motion for reconsideration (ECF No. 174) shows Defendant did file a petition for writ of certiorari with the United States Supreme Court which was denied on October 3, 2011. The court did not have this information available to it when it dismissed Defendant's §2255 motion. Defendant's §2255 motion filed on August 6, 2012, is timely. This

## **ORDER RE MOTION FOR RECONSIDERATION-**

1 court erred in dismissing the motion for untimeliness.

2 Nevertheless, nothing presented in Defendant's motion for  
 3 reconsideration persuades the court that it committed a clear error in  
 4 concluding that his counsel was not ineffective for failing to raise a Tenth  
 5 Amendment argument at trial or on appeal. Nor is the court persuaded that its  
 6 initial decision dismissing Defendant's §2255 motion was manifestly unjust.<sup>1</sup>  
 7 That motion remains dismissed.

8 Defendant's Motion For Reconsideration Pursuant To Fed. R. Civ. P.  
 9 59(e) (ECF Nos. 174 and 175) is **GRANTED in part** and **DENIED in part** as  
 10 set forth above. Pursuant to Rule 11(a) of the Rules Governing Section 2255  
 11 Cases, this court continues to decline to issue a certificate of appealability as  
 12 Defendant has not made a substantial showing of the denial of a constitutional  
 13 right. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484-85  
 14 (2000).

15 **IT IS SO ORDERED.** The District Executive shall forward copies of  
 16 this order to the Defendant.

17 **DATED** this 19th of November, 2012.

18 *s/Lonny R. Sukko*

19 \_\_\_\_\_  
 20 LONNY R. SUKCO  
 United States District Judge

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 25 <sup>1</sup> "Newly discovered evidence" is not a possible basis for reconsideration in  
 26 this matter and the Defendant does not contend there has been an intervening  
 27 change in controlling law since the court issued its initial decision.